

**DEPARTMENT OF STATE REVENUE****LETTER OF FINDINGS NUMBER: 01-0098P**

Adjusted Gross Income Tax - Penalty  
For Fiscal Year Ended March 31, 1999

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**ISSUE(S)****I. Tax Administration—Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer was audited for fiscal years 1997, 1998, and 1999. Upon audit it was discovered that the taxpayer failed to include in the numerator of the sales factor, the sales from Indiana to a state in which the taxpayer is not taxable under PL 86-272. The taxpayer correctly reported the sales in 1997 and 1998. The adjustment amounted to twenty-eight percent (28%) of the tax due for 1999.

Taxpayer protests the penalty and states that the underestimate was purely an oversight on the part of the Taxpayer and it prepares a schedule of sales by state with a separate column for states to which it does not have nexus and are therefore subject to sales throwback rules. Taxpayer further states that it was its intent to properly apply the sales throwback rules of Indiana and the oversight was disclosed to the auditor.

**I. Tax Administration—Penalty****DISCUSSION**

Taxpayer states reasonable cause exists because it discovered the oversight prior to the auditor's arrival and disclosed the information promptly to the auditor.

Taxpayer was assessed a negligence penalty because it failed to properly report sales subject to apportionment. The deficiency amounted to more than twenty-eight percent (28%) of the total tax due. A review of the information on the taxpayer's apportionment schedule would have shown that the apportionment schedule for 1999 did not include PL 86-272 income as in prior years. Taxpayer has the responsibility to assure that tax returns are properly filed.

The department finds that a negligence penalty is proper.

**FINDING**

Taxpayer's protest is denied.